

# **SECTION A**

## **Sales and Use Tax, Nebraska and Local Option**

# BASIC PROVISIONS AND TAX BASE OF THE NEBRASKA SALES AND USE TAX LAWS AND LOCAL OPTION SALES AND USE TAX LAWS

## *Sales Tax\**

Nebraska sales tax is imposed upon the gross receipts from all sales, leases, installation, application, repair, or maintenance of tangible personal property, the gross receipts of every person providing or installing utility services, the gross receipts of retailer of intellectual or entertainment properties, the gross receipts from the sale of admissions, the gross receipts from renting or furnishing accommodations or lodging for periods of less than thirty days, and the gross receipts from the sale or providing of certain enumerated services. **The state sales tax rate is 5.5 percent.**

Property is defined as all tangible and intangible property (including rights, licenses, and franchises) that are subject to tax in the above paragraph.

## *Use Tax\**

Nebraska consumer's use tax is a complement to the sales tax and is imposed upon the storage, use, distribution or consumption of any tangible personal property and on any intangible property or services purchased at retail when the sales or retailer's use tax has not been paid, regardless of where the property is purchased and on any transaction subject to the sales tax. A personal use tax liability is extinguished if the sales or use tax has previously been paid to Nebraska.

## *Local Option Sales and Use Tax*

Any Nebraska county or incorporated municipality may impose a local sales and use tax upon approval by a majority of their voters in a regular election. The local tax applies to the identical transactions subject to the state sales and use tax, with the exception of direct-to-home satellite programming. Local option taxes of 0.5, 1, and 1.5 percent may be approved by city or county voters. The tax is collected and remitted to the state and is then allocated back to the municipalities after deducting the amount of refunds made and a three percent administrative fee. The three percent administrative fee is deposited in the Municipal Equalization Fund.

\* The taxes collected are deposited into two funds: Highway Allocation Fund, and the State General Fund. Deposits to the Highway Allocation Fund are made from the sales and use taxes derived from motor vehicles, trailers, and semi-trailers. The balance of taxes collected is deposited in the State General Fund.

# SALES AND USE TAX

## LOCAL OPTION SALES AND USE TAX

### STATUTORY REFERENCE AND DESCRIPTION

### ESTIMATED TAX EXPENDITURE COST NA = NOT AVAILABLE

### EXEMPTIONS

**77-2701.16 and 77-2701.34**

Sales of property intended for resale, rental, or lease.

\$1,413,000,000

**77-2701.16(15)(a)**

Rebates granted by motor vehicle or motorboat manufacturers or dealers at the time of sale of motor vehicles or motorboats which rebates function as discounts from the sales price of the motor vehicles or motorboats.

\$12,100,000

**77-2701.24 and 77-2704.48**

Occasional sales which include:

**77-2701.24(1) and 77-2704.48**

An intercompany sale, but not a lease or of property or motor vehicles or rental motorboats from a subsidiary to a parent or vice versa, from one subsidiary to another subsidiary having the same parent or between brother-sister companies.

NA

**77-2701.24(2) and 77-2704.48**

Garage sales at which household goods and personal belongings are sold. The sales cannot be held more than three days in a year and such sales must meet the additional criteria contained in this subsection.

\$1,500,000

**77-2701.24(3) and 77-2704.48**

The sale of a business or farm machinery and equipment if each of the conditions in this subsection are met.

NA

**77-2701.24(4) and 77-2704.48**

A sale of property by an organization created exclusively for religious purposes, or by an agent of the organization for such sale, if each of the conditions in this subsection is met.

NA

**77-2701.24(5) and 77-2704.48**

Any sale of property that is made in connection with the sale to a single buyer of all or substantially all of the property of a trade or business if the seller has previously paid a sales or use tax thereon.

NA

**77-2701.33(2)**

Room rentals made by hospitals, nursing homes, college dormitories and other such facilities licensed by the state.

\$50,846,000

Lodging rented or leased for 30 days or longer.

\$60,700,000

<b>77-2701.35(2)(a)</b> Cash discounts allowed and taken on sales, including coupons issued and redeemed by the retailer.	\$1,777,000
<b>77-2701.35(2)(b)</b> Separately stated finance, carrying, service, or interest charges in connection with credit extended under a deferred payment plan.	\$253,000
<b>77-2701.35(2)(d)(i)</b> The value of trade-ins taken in connection with a sale of property.	\$2,757,000
<b>77-2701.35(2)(d)(ii)</b> The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another vehicle or motorboat.	\$89,665,000
<b>77-2704.02</b> Purchases by the U.S. government, its agencies, and wholly-owned corporations.	(State taxation prohibited)
<b>77-2704.03</b> Fuel for use in aircraft.	\$7,600,000
<b>77-2704.04</b> Minerals, oil, and gas severed from the ground.	\$5,750,000
<b>77-2704.05</b> Motor vehicle fuels such as gasoline, including casing head or natural gas, benzol, naphtha, and benzine and any other liquids or gases for use in motor vehicles, motorboats, or aircraft; diesel and compressed fuels delivered into the fuel supply tanks of other vehicles.	\$116,000,000 <sup>1</sup>
<b>77-2704.07</b> Newspapers issued at least once a week. Newspaper advertising supplements actually distributed with newspapers.	\$5,377,000
<b>77-2704.08</b> Leased property sold to a lessee of the property under a rental agreement (lease-purchase agreement) where the rental payments are credited against the purchase price of the property to the extent tax was collected on the payments.	NA
<b>77-2704.09(1)</b> Insulin and prescription medicines, durable medical equipment, home medical supplies, mobility enhancing equipment, prosthetic and orthotic devices, oxygen, and any oxygen equipment for a patient's use sold under a doctor's prescription.	\$54,054,000
<b>77-2704.10(1)</b> Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement	\$3,131,000

with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution. However, such exemption does not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt.

**77-2704.10(2)**

Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a church function.	\$576,000
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**77-2704.10(3)**

Meals and food products, including soft drinks and candy, for human consumption, when served to patients and inmates of hospitals	\$9,506,000 <sup>2</sup>
and other institutions licensed by the state for the care of human beings.	\$5,247,000 <sup>3</sup>

**Regulation 1-052.03**

Amounts received by Nebraska florists who make deliveries in this state pursuant to instructions received from florists outside this state.	\$502,000
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**77-2704.10(4)**

Fees for admissions, meals, or food charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act.	Minimal
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**77-2704.10(6)**

Fees charged by a school district, student organization or parent teacher association for functions at elementary or secondary schools (public or private).	\$1,049,000
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**77-2704.11**

Property shipped outside the state pursuant to a sales contract calling for out-of-state delivery by the retailer, or delivery by the retailer to a carrier, to the post office, to Native Americans residing on a reservation, or to a forwarding agent for shipment out-of-state; a purchase by a common or contract carrier transported by the carrier out-of-state for use by such carrier.	\$2,905,000
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**77-2704.11**

The amount charged for the fabrication (production labor) of property owned and furnished by an in-state or out-of-state customer which is fabricated in this state and then shipped by the Nebraska retailer performing the fabrication to a point outside this state.	NA
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**77-2704.12(1)**

Purchases made by:	
Religious organizations;	
Nonprofit organizations providing services exclusively to the blind;	\$38,321,000
Nebraska licensed schools, colleges, universities established under sections 79-1601 to 79-1607 or sections 85-1101 to 85-1111 (public or private) (not including Nebraska public post-secondary institutions);	

Nonprofit Nebraska licensed hospitals;  
 Health clinics when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services, or when the health clinic receives federal funds through the United States Public Health Service for the populations that are medically under-served;  
 Nonprofit Nebraska licensed skilled nursing facilities;  
 Nonprofit Nebraska licensed intermediate care facilities;  
 Nonprofit Nebraska licensed intermediate care facilities for the mentally retarded;  
 Nonprofit Nebraska licensed nursing facilities;  
 Licensed child-caring agencies or child placement agencies;  
 Nonprofit organizations providing services primarily for home health care purposes.

A contractor may be appointed as the purchasing agent of the above entities and make tax-free purchases of materials that will be annexed to real property and construction services. \$8,986,000

**77-2704.12(4) and 77-2704.15(3)**

Any organization listed in 77-2704.12(1) or any governmental unit listed in 77-2704.15(1), except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to annexing property to the project may apply to the State Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property annexed to real estate. NA

**77-2704.13(1)**

Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than 50 percent of the amount purchased is for use directly in irrigation or farming. \$57,400,000

**77-2704.13(2)**

Sales and purchases of such energy sources or fuels when more than 50 percent of the amount purchased is for use directly in processing, manufacturing, generation of electricity, refining of property, or by any hospital. \$61,200,000

**77-2704.13(3)**

Water used for irrigation of agricultural lands and manufacturing purposes. \$1,215,000

**77-2704.14**

The use of coin-operated machines used for laundering and cleaning, except the cleaning or washing of motor vehicles. \$690,000

**77-2704.15(1)**

Purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or any Nebraska county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resource district, elected county fair board, or joint entity or agency formed to fulfill \$168,000,000

the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

**77-2704.15(2)**

The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which is annexed to the structure and belongs to the state or the governmental unit. The appointment of purchasing agents must be in writing and occur prior to annexing any property to real estate.

Included in  
77-2704.15(1)

**77-2704.16**

Purchases made by the Nebraska State Fair Board.

\$53,000

**77-2704.17 through 77-2704.20**

Purchases made by the Nebraska Investment Finance Authority, the Small Business Development Authority, and licensees of the State Racing Commission.

Minimal

**77-2704.21**

The entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Veterans' Administration or the Department of Health and Human Services Finance and Support for a disabled person. If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed.

\$39,000

**77-2704.23**

Semen and insemination services for use in ranching, farming, commercial, or industrial uses.

\$557,000

**77-2704.24**

Food or food ingredients for human consumption prepared for immediate consumption except for prepared food for immediate consumption on or off the premises of the retailer (unless sold by certain organizations).

\$114,650,000

**Regulation 1-083**

Meals furnished at fraternities, sororities, cooperative student societies, and summer camps.

\$406,350

**77-2704.25**

Property, except meals for human consumption, sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

\$102,000

<b>77-2704.26</b>	An aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days.	NA
<b>77-2704.27</b>	Railroad rolling stock whether purchased by a railroad or by another person; the rental or lease of railroad rolling stock.	\$8,760,000
<b>77-2704.27</b>	Rentals of railroad rolling stock interchanged pursuant to the Interstate Commerce Act.	\$984,000
<b>77-2704.36</b>	Agricultural machinery and equipment for use in commercial agriculture.	\$13,400,000
<b>77-2704.38</b>	Lottery tickets sold pursuant to the State Lottery Act.	\$5,000,000
<b>77-2704.39</b>	Sales of syndicated programming for rebroadcast by a radio or television station.	NA
<b>77-2704.40</b>	Sales of molds, dies, and patterns which are used to manufacture a single product that is either injection molded from plastic or stamped from metal.	NA
<b>77-2704.41 and 77-2704.46(1)</b>	Animal life whose products constitute food for human consumption. Feed, water, and veterinary medicines and agricultural chemicals used in caring for animal life, the products of which constitutes food or apparel for human consumption.	\$333,570,000
<b>77-2704.42</b>	Copies of public records, except those documents developed, produced, or acquired and made available for commercial sale to the general public.	NA
<b>77-2704.43</b>	Industrial machinery and equipment, including parts for repairs, by another state or a political subdivision of another state if the other state provides a similar reciprocal exemption.	NA
<b>77-2704.44(1)</b>	Property purchased by a non-nexus seller and retained solely for transporting out-of-state or to be incorporated into other property which will then be transported out-of-state.	\$668,000
<b>77-2704.44(2)</b>	Property purchased in another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or any foreign country which is intended to be used at that location, and which is actually used for its	NA



intended purpose (motor vehicles or motor boats registered in another state, commonwealth, territory, possession or country); and such property is brought into the State of Nebraska for use.

**77-2704.45**

Property which will become an ingredient or component part of property which is manufactured, processed or fabricated for sale at retail. \$654,894,000

**77-2704.46(2)**

Seeds and annual plants sold to commercial producers of the products of such seeds, the products being for human consumption; seed legumes, grasses, and grains for agricultural purposes. \$16,043,000

**77-2704.46(3)**

Agricultural chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents to be applied to land or crops. \$31,619,000

**77-2704.46(4)**

Oxygen for use in aquaculture. NA

**77-2704.47(1)**

Nonreturnable containers sold to persons who place contents in the container and sell the contents with the container. \$20,523,000 \*

**77-2704.47(2)**

Containers which hold contents that are not subject to sales or use tax. Included in above \*

**77-2704.47(3)**

Returnable containers when sold with the contents or when resold for refilling. Included in above \*

**77-2704.49 and 77-2704.31**

Property which has been taxed in another state, territory, or possession of the U.S., when a reciprocal exclusion or an exemption to similar transactions in Nebraska is granted. NA

**77-2704.50 and 77-2704.30(1)**

Materials and replacement parts when used in the repair and maintenance or manufacture of railroad rolling stock whether owned by a railroad or by any other person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft used as a common or contract carrier; the purchase of such motor vehicles, watercraft, or aircraft; the purchase of accessories which could have been included at the time of purchase; the purchase of equipment required by a regulatory agency. \$19,982,000

**77-2704.51**

Gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of sales of telecommunications service between telecommunications companies, including division of revenue, settlements, or access charges. \$9,547,000

<b>77-2704.52</b>	
Telephone services rendered using a prepaid telephone calling arrangement.	\$952,000
<b>77-2704.53</b>	
Gross income received from videotape, film rentals, and satellite programming (when tax is to be charged on the admission or service).	\$1,367,000
<b>77-2704.54</b>	
Food or food ingredients which are actually purchased by electronic benefits transfer or with food coupons.	\$4,900,000
<b>77-2704.55</b>	
Certain contractor labor; exemption;	\$165,970,000
(1) Sales and use taxes shall not be imposed on the labor of a contractor purchased in connection with the following types of construction projects:	
(a) The first or original construction of a structure;	
(b) The addition of an entire room or floor to any existing building;	
(c) The completion of an unfinished portion of an existing structure;	
(d) The restoration, reconstruction, or replacement of a structure damaged or destroyed by fire, flood, tornado, lightning, explosion, ice storm, or natural disaster;	
(e) The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or	
(f) The major renovation of an existing building or a unit of an existing building described in subdivision (2)(c)(ii) of section 77-2704.55.	

## CREDITS AND REFUNDS

<b>77-2704.32</b>	
A sales tax refund for tax paid on materials actually annexed outside the United States or its territories or possessions.	NA
<b>77-2704.33</b>	
A sales tax credit or refund is given when a written contract exists for a fixed price for a construction project and the sales tax rate is increased during the term of the contract. The contractor can then apply for a refund of the increased sales tax amount paid when the amount exceeds ten dollars.	(Amount depends on rate change) NA
<b>77-2708(2)(j)(i)&amp;(ii)</b>	
A sales tax credit is given to the retailer, contractor, or repairperson for sales charged off as worthless and uncollectible for federal income tax purposes or against bad debt reserve; a credit is given for the portion of the purchase price remaining unpaid at the time of repossession.	NA
<b>7-2708.01</b>	
A refund is given for the sales tax paid on depreciable repairs or parts for agricultural machinery and equipment used in commercial agriculture.	NA

**77-27,149 through 77-27,155**

A refund is made for sales tax paid by a claimant or his contractor on an air or water pollution control facility used primarily for eliminating industrial or agricultural waste from air or water. \$27,000

**77-27,187 (Employment Expansion and Investment Incentive Act -LB 608)**

Tax credits are provided for qualifying businesses which increase investment by at least \$250,000 and increase net employment by an average of five full-time equivalent employees during a two year period. Credits are refundable and may be used to reduce the taxpayer's income tax liability or to obtain a refund of sales and use tax paid. The credits are \$3000 per net new employee and \$2,750 per \$50,000 net new investment. (See separate section)

**77-4101 (Employment and Investment Growth Act - LB 775, as amended by LB 1234)**

A taxpayer's business may qualify for tax incentives under the Employment and Investment Growth Act if the business plans result in either (a) the investment in a qualified property of at least \$3,000,000 and the hiring of at least 30 new employees, or (b) the investment in qualified property of at least \$10,000,000 and the hiring of at least 100 new employees, or (c) the investment in qualified property of at least \$20,000,000. (See separate section)

**DEDUCTIONS****77-2703(2)(d) and 77-2708(1)(d)**

A collection fee is taken by retailers and other persons collecting the sales and use tax to defer the expense of collection. The collection fee is 2½ percent of the first \$3,000. The fee is computed on the basis of each licensed location when a combined return is filed. \$11,082,000 <sup>4</sup>

**77-27,144**

The state deducts from local sales and use tax proceeds the amount of refunds made and a three percent administrative fee. \$7,246,000 <sup>5</sup>

<sup>1</sup> Includes sales tax from fuel for use in an aircraft. The assumption is that imposition of the sales and use tax would be in addition to the state and federal motor fuel and aviation fuel taxes.

<sup>2</sup> Includes Medicare and Medicaid payments.

<sup>3</sup> Excludes Medicare and Medicaid payments.

<sup>4</sup> Includes Retailer's Collection Fee and County Treasurer's Collection Fee.

<sup>5</sup> This would be a tax expenditure for local governments (cities) with a city sales tax.

## **SALES AND USE TAX, NEBRASKA AND LOCAL OPTION RECOMMENDATIONS**

The Nebraska Department of Revenue has no recommendations.